

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

UNITED STATES, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	No. 1:23-cv-00108-LMB-JFA
	)	
GOOGLE LLC,	)	
	)	
Defendant.	)	

**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION TO SEAL**

Pursuant to Local Civil Rule 5, Plaintiffs respectfully submit the instant memorandum of law in support of their motion to seal portions Plaintiffs' memorandum of law in support of Plaintiffs' motion for an adverse inference, and to seal portions or all of exhibits 3-11, 15-16, and 18-37 attached to the memorandum. The memorandum and exhibits contain information designated by Defendant Google as confidential or highly confidential under the parties' protective order (Dkt. 203). The unredacted exhibits and the unredacted memorandum have been filed electronically using the sealed filing events.

Pursuant to paragraph 21 of the Protective Order (Dkt. 203), through this motion Plaintiffs inform the Court of the confidentiality designations of these materials and requests that the Court seal portions of Plaintiffs' memorandum and exhibits identifying such information, and maintain the redacted memorandum on the public docket, in order to provide Google sufficient time to provide the Court with support for the need to seal these documents. But for the requirements of the Protective Order, Plaintiffs would not seek to seal these documents.

## **ARGUMENT**

Public access to judicial records is “protected both by the common law and the First Amendment.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). “The common law presumes a right of the public to inspect and copy ‘all judicial records and documents.’” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). However, the common law presumption in favor of public access can be overcome by a showing that a litigant has “some significant interest that outweighs the presumption.” *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988). Accordingly, before ordering the sealing of a document, a district court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the document[], and (3) provide specific reasons and factual findings supporting its decision to seal the document[] and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *see also* Local Civ. R. 5(C).

Plaintiffs do not believe the information referenced in their memorandum or the exhibits are of a type that outweighs the presumption in favor of public access. Nonetheless, because the material was designated as confidential or highly confidential by Google, Plaintiffs have filed the present motion in accordance with their obligations under paragraph 21 of the Protective Order. As stated in the notice filed concurrently with this memorandum, any interested member of the public and any other party may indicate their position on the motion.

## **CONCLUSION**

For the foregoing reasons, Plaintiffs’ respectfully requests that the Court seal portions of Plaintiffs’ memorandum and exhibits 3-11, 15-16, and 18-37

Dated: August 2, 2024

Respectfully submitted,

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